

REMARKS/ARGUMENTS

By the present amendment, claim 7 has been amended in order to depend from claim 6. The amendments to the claims have been made without prejudice and without acquiescing to any of the Examiner's objections. Applicant reserves the right to pursue any of the deleted subject matter in a further divisional, continuation or continuation-in-part application. No new matter has been entered by the present amendment and its entry is respectfully requested.

The office action dated November 14, 2007 has been carefully considered. It is believed that the amendment and the following comments represent a complete response to the Examiner's rejections and place the present application in condition for allowance. Reconsideration is respectfully requested.

Specification

The specification has been amended on page 1 in order to update the continuing data. We are also submitting a revised Application Data Sheet wherein the information has been updated.

35 USC §112, Second Paragraph

The Examiner has objected to claim 7 under 35 USC §112, second paragraph, as being indefinite. In particular, the Examiner notes that there is insufficient antecedent basis for the term "plant cell" in claim 1. In response, claim 7 has been amended in order to depend from claim 6, which has antecedent basis for the term "plant cell".

In view of the foregoing, we respectfully request that the objection to claim 7 under 35 USC §112, second paragraph, be withdrawn.

35 USC §102

The Examiner has objected to claims 1-6 under 35 USC §102(b) as being anticipated by both Parmenter et al. (Plant Molecular Biology, 1995, 29:1167-1180) as well as U.S.

Patent No. 5,948,682 ("Moloney"). We respectfully disagree with the Examiner for the reasons that follow.

To anticipate, a single reference must teach every limitation of the claimed invention either explicitly or inherently (MEHL/Biophile Int'l Corp. v Milgraum, 192 F.3d 1362, 1365 (Fed. Cir. 1999)). It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art (Trintec Indus., Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 1295 (Fed. Cir. 2002)). Anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references" (W.L. Gore v. Garlock, Inc., 721 F.2d at 1554 (Fed. Cir. 1983)).

Both Parmenter et al. and Moloney relate to the assignee's technology to prepare heterologous proteins on oil bodies. These references will be addressed together as they both relate to the same technology. It is noted that Parmenter et al. is specifically related to the production of hirudin in plants, while Moloney relates to the production of any heterologous protein on oil bodies. However, neither of these references can be said to anticipate the claims as they do not teach steps (d) and (e) as recited in claim 1. Neither of the references disclose washing the oil bodies to "obtain a washed oil body preparation comprising the antigen". Further, the references do not disclose "formulating the washed oil bodies associated with the antigen into an immunogenic formulation". As mentioned previously, Parmenter et al. is concerned with hirudin which is not an antigen. While Moloney is not restricted to the production of any particular protein, it clearly does not disclose formulating washed oil bodies associated with an antigen into an immunogenic formulation. It is noted that the Examiner did not point to any location in Moloney that discloses step (e) of claim 1.

As neither of the references disclose every limitation of claim 1, the references cannot be said to anticipate the claims.

Appl. Serial No. 10/757,720
Amdt. Dated May 14, 2008
Response to office action dated November 14, 2007

In view of the foregoing, we respectfully request that the objection to the claims under 35 USC §102 be withdrawn.

The Commissioner is hereby authorized to charge any fee (including any claim fee) which may be required to our Deposit Account No. 02-2095.

In view of the foregoing comments and amendments, we respectfully submit that the application is in order for allowance and early indication of that effect is respectfully requested. Should the Examiner deem it beneficial to discuss the application in greater detail, she is kindly requested to contact the undersigned by telephone at (416) 957-1682 at her convenience.

Respectfully submitted,

HARM M. DECKERS

By 
Micheline Gravelle
Reg. No. 40,261

Bereskin & Parr
Box 401, 40 King Street West
Toronto, Ontario
Canada M5H 3Y2

Tel: 416-957-1682
Fax: 416-361-1398